

On June 11, 2012, Plaintiff, a California state prisoner proceeding *in forma pauperis*, filed a civil rights action under 42 U.S.C. § 1983, against correctional officers at Pelican Bay State Prison. (“PBSP”) On October 5, 2012, the Court found that Plaintiff stated a cognizable claim for relief, and ordered service upon the named Defendants. (Doc. No. 4.) On October 19, 2012, notices of lawsuit and requests for waivers of service of summons were mailed to Defendants.<sup>1</sup> (Doc. Nos. 5, 6, 7, 8, 12.) Defendants Barneburg, Buchanan, Beeson and Countess have returned executed waivers.<sup>2</sup> (Doc. Nos. 15, 16, 27, 28.) The notice of lawsuit and request

<sup>2</sup> Defendants Barneburg and Buchanan filed an answer to the complaint with a demand for a jury trial. (Doc. No. 18.) Plaintiff has filed a motion for an extension of time to respond to this filing. (Doc. No. 26.) Plaintiff's motion is **DENIED** as unnecessary.

1 for waiver of service of summons sent to Defendant J. Reyes<sup>3</sup> was returned unexecuted because  
 2 he did not work for PBSP. (Doc. No. 14.) The Court does not have current, accurate locate  
 3 information for Defendant J. M. Reyes.

4 Although a plaintiff who is incarcerated and proceeding in forma pauperis may rely on  
 5 service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such  
 6 service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate  
 7 defendant and attempt to remedy any apparent defects of which [he] has knowledge.” *Rochon v.*  
 8 *Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff’s complaint has been pending for  
 9 over 120 days, and thus, absent a showing of “good cause,” is subject to dismissal without  
 10 prejudice. *See* Fed. R. Civ. P. 4(m). Because Plaintiff has not provided sufficient information to  
 11 allow the Marshal to locate and serve Defendant J. M. Reyes, Plaintiff must remedy the situation  
 12 or face dismissal of his claims against Defendant J. M. Reyes without prejudice. *See Walker v.*  
 13 *Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (holding prisoner failed to show cause why  
 14 prison official should not be dismissed under Rule 4(m) where prisoner failed to show he had  
 15 provided Marshal with sufficient information to effectuate service).

16 In the interest of justice, the Litigation Coordinator at PBSP is requested to provide more  
 17 information about the employment status of Defendant J. M. Reyes. To the extent there was  
 18 more than one “J. M. Reyes” at PBSP, Plaintiff proffers that Defendant J. M. Reyes was a  
 19 correctional officer assigned to the Institution Security Unit in February 2007. (Doc. No. 1 at 6-  
 20 7.) The requested information shall indicate whether J. M. Reyes was a former employee of  
 21 PBSP, and if he is currently an employee of the California Department of Corrections and  
 22 Rehabilitation (“CDCR”). If he is a former employee of PBSP, but still employed with CDCR,  
 23 the Litigation Coordinator is requested to provide a current employment address for Defendant J.  
 24 M. Reyes. If he is a former employee but no longer employed with CDCR, the Litigation  
 25 Coordinator is requested to provide a forwarding address, or notice that such information is not

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26  
 27 <sup>3</sup> Plaintiff identified Defendant J. Reyes as both J. Reyes and J. M. Reyes in his  
 28 complaint. (Doc. No. 1 at 1, 6.) The Court docket and the Summons name J. Reyes. **The Clerk  
 shall change the docket to substitute J. M. Reyes for J. Reyes as a defendant.**

1 available. **The Clerk shall forward a copy of this order to the Litigation Coordinator at**  
 2 **PBSP, who is requested to provide the current employment status for Defendant J. M.**  
 3 **Reyes, and any available forwarding address, or notice that such information is not**  
 4 **available, within twenty (20) days from the date this order is filed.**

5 Plaintiff must file notice and provide the Court with an accurate current location of  
 6 Defendant J. M. Reyes such that the Marshal is able to effect service. **If Plaintiff fails to**  
 7 **provide the Court with an accurate current location for Defendant J. M. Reyes within**  
 8 **thirty (30) days of the date this order is filed, Plaintiff's claims against this Defendant will**  
 9 **be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil**  
 10 **Procedure.**

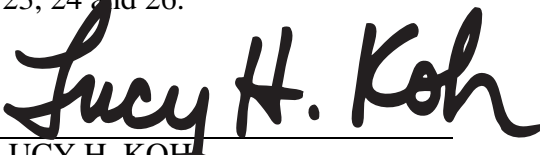
11 Plaintiff has filed a motion requesting the Court to order formal service of process for  
 12 Defendants Barneburg, Buchanan, Beeson, Countess and Reyes. (Doc. Nos. 23.) Based on the  
 13 foregoing reasons, Plaintiff's motion requesting an order for service of process is **DENIED** as  
 14 moot and premature.

15 Plaintiff has also filed a motion for appointment of counsel. (Doc. No. 24.) Plaintiff's  
 16 motion for appointment of counsel is **DENIED** for want of exceptional circumstances. *See Rand*  
 17 *v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997); *see also Lassiter v. Dep't of Social Services*,  
 18 452 U.S. 18, 25 (1981) (there is no constitutional right to counsel in a civil case). The issues in  
 19 this case are not particularly complex, and Plaintiff has thus far been able to adequately present  
 20 his claims. This denial is without prejudice to the Court's *sua sponte* appointment of counsel at  
 21 a future date should the circumstances of this case warrant such appointment.

22 This order terminates docket numbers 23, 24 and 26.

23 IT IS SO ORDERED.

24 DATED: 1/24/13

  
 LUCY H. KOH  
 United States District Judge